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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION II
26 Federal Plaza
New York, New York 10278

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In the Matter of :
:
Lancia Oil Co., Inc. :
Hackensack, New Jersey : Docket No. OH-II-81-11
:
Violation of the Oil Pollution :
Prevention Regulations Issued : NOTICE OF VIOLATION AND
Pursuant to §311(j)(1)(C) of the : ASSESSMENT OF CIVIL PENALTY
Clean Water Act of 1977, 33 U.S.C.:
§1321(j)(1)(C) :
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NOTICE OF VIOLATION

THIS IS TO NOTIFY YOU THAT the United States Environmental Protection Agency (EPA) has reason to believe that Lancia Oil Co., Inc. (hereinafter, "Respondent"), with offices located at 340 South River Road, Hackensack, New Jersey 07608 is subject to the Oil Pollution Prevention Regulations, 40 C.F.R. Part 112, promulgated pursuant to §311(j)(1)(C) of the Clean Water Act, 33 U.S.C. §1321(j)(1)(c), and that Respondent has violated §112.3 of the Regulations, and that more specifically, Respondent has:

1. failed to prepare and maintain at its facilities located at the above address after July 10, 1974 a Spill Prevention Control and Countermeasure (SPCC) Plan prepared in accordance with good engineering practices and meeting all requirements of 40 C.F.R. §112.7, as required by §112.3 of the Regulations.
2. failed to fully implement at its above-specified facilities by January 10, 1975 an SPCC Plan prepared in accordance with good engineering practices and meeting all requirements of 40 C.F.R. §112.7, as required by §112.3 of the Regulations.

SPECIFIC FINDINGS OF VIOLATION

On October 15, 1980 an EPA-authorized inspection of Respondent's facility was performed. EPA's inspector spoke with Mr. Ugo Lancia, on information and belief the president of Respondent corporation, who stated that an SPCC Plan for the facility did not exist. The facility maintains oil storage capacity in excess of 1,320 gallons above ground, specifically, approximately 1,500,000 gallons, and oil, if released from its containment at the facility, is capable of reaching the Hackensack River, a water of the United States.

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ASSESSMENT OF CIVIL PENALTY

Section 311(j)(2) of the Clean Water Act, 33 U.S.C. §1321(j)(2), and regulations promulgated thereunder, in particular, 40 C.F.R. §112.6, provide that violation of 40 C.F.R. §112.3 gives rise to liability for a civil penalty not to exceed \$5,000 (FIVE THOUSAND DOLLARS) for each day the violation continues.

WHEREFORE, on the basis of the facts presently before the EPA, a civil penalty is hereby proposed to be assessed against Respondent in the amount of \$10,000.00 (TEN THOUSAND DOLLARS).

MITIGATION OF CIVIL PENALTY ASSESSED

Prior to payment of the penalty proposed to be assessed or the submission of a request for a Hearing, as set forth below, Respondent may, within 15 (FIFTEEN) days of receipt of this Notice, submit to EPA written explanations, information, or other materials in answer to the charges made, in mitigation of the penalty assessed, or bearing on its efforts to achieve compliance after notification of the violation. In addition to receipt of this Notice, "notification of the violation" shall include actual or constructive notice to Respondent following any EPA inspection of Respondent's facility for purposes of determining compliance with EPA's SPCC Regulations or following receipt by Respondent of an EPA SPCC compliance survey and completion and return of that survey to EPA by Respondent or any of its officers, employees, or authorized agents.

If the information to be submitted includes corrective actions or additional preventive measures to be taken, Respondent shall agree to commit itself to take such measures in as short a time as possible, by means of a written statement to that effect signed by a corporate officer. Such a commitment shall include a proposed schedule of compliance, including a statement of the commitment of necessary resources, which commitment shall be made by a duly authorized officer of Respondent of at least the rank of vice-president.

A reassessment of the proposed penalty will be made on the basis of any information received, and a revised assessment of civil penalty for violation of the Oil Pollution Prevention Regulations may be issued if it is determined that a penalty in a different amount is appropriate. If it is determined that the amount of penalty originally proposed should not be changed, Respondent shall be so informed.

Any written explanations, information, or other materials in answer to the charges made, or in mitigation of the penalty assessed, shall be submitted to the Director, Enforcement Division, United States Environmental Protection Agency, Region II, 26 Federal Plaza, New York, New York 10278 through the duly appointed representative of the Enforcement Division Director, whose name appears below as the Agency Contact for Further Information and Settlement Matters.

NOTICE OF OPPORTUNITY FOR A HEARING

Within 30 (THIRTY) days of the date of receipt of the Notice of Violation, Respondent may, pursuant to §114.5 of the Interim Regulations on Civil Penalties for Violation of Oil Pollution Prevention Regulations, 40 C.F.R. Part 114, published at 39 Fed. Reg. 169, pp. 31602-31603 (August 24, 1974), request a hearing by submitting a written request, signed by a duly authorized officer, director, agent, or attorney of Respondent, to the Regional Administrator, Region II EPA, with a copy of said request to the representative of the Division Director specified below. Requests for hearings shall state the name and address of the person requesting the hearing, enclosed a copy of the Notice of Violation, and state with particularity the issues to be raised at the hearing. If the request complies with the requirements of 40 C.F.R. §114.5, a hearing will be scheduled at the earliest date on which the Region II Hearing Officer is available, at a time and location set by EPA after consultation with Respondent. The hearing will be conducted in accordance with 40 C.F.R. §114.9. Respondent may be represented by counsel at the hearing.

Within 30 (THIRTY) days after the delivery of the transcript of record of the hearing, the Presiding Officer shall issue findings, including the amount of civil penalty to be assessed. A copy of the Presiding Officer's decision shall be sent to Respondent. The decision of the Presiding Officer shall become the final decision of EPA unless within 15 (FIFTEEN) days from Respondent's receipt of such decision Respondent appeals the decision to the Administrator. Any appeal must follow the format set forth in 40 C.F.R. §114.11(b). In rendering his decision, the Administrator may adopt, modify, or set aside the decision of the Presiding Officer.

If the decision of the Presiding Officer, or, in the case of an appeal, the Administrator, assesses a civil penalty as part of his decision, such penalty shall be payable within 30 (THIRTY) days of receipt of the Final Order. Any finding by the Presiding Officer or, in the case of an appeal, the Administrator, that Respondent has failed to prepare and/or implement an SPCC Plan at its facility shall be remedied by the entry of Respondent and EPA into a Consent Order providing for preparation and/or implementation of an SPCC Plan according to a time schedule satisfactory to EPA Region II. Such Consent Order shall be executed by the Respondent not later than 30 (THIRTY) days of receipt of the final order.

Failure on the part of Respondent to pay the civil penalty so assessed within the time provided shall result in the commencement of a collection action against Respondent on the part of the United States pursuant to 28 U.S.C. §§1345 and 1355. Failure on the part of Respondent to enter into a Consent Order within the time provided shall result in the commencement of an action against Respondent on the part of the United States for such injunctive relief as may be required.

SETTLEMENT CONFERENCE

Regardless of whether a hearing is requested, at any time after receipt of this Notice of Violation, and prior to the date set for a hearing,

Respondent may confer with EPA concerning the violation noticed herein or the amount of penalty to be assessed. Should such conference result in an agreement, that agreement shall be issued as a Settlement Agreement in the nature of an Order on Consent by the Regional Administrator, Region II EPA. The issuance of such a Settlement Agreement shall constitute a waiver of Respondent's right to contest through further administrative proceedings any matter agreed to therein.

SPCC PUBLIC FILE

EPA Region II maintains a public spill prevention file at its offices located at 26 Federal Plaza, New York, New York 10278, Room 432. This file contains information on past decisions rendered by EPA both Regionally and on appeal to the Administrator in connection with the hearing procedures set forth above, as well as current spill prevention regulations and pertinent memoranda issued from time-to-time by EPA Headquarters, Washington, D.C. To request access to this file, you may contact Dr. Richard A. Baker, Chief, Permits Administration Branch, Management Division, at the above address, or by telephone at 212-264-9881.

DEFAULT BY RESPONDENT

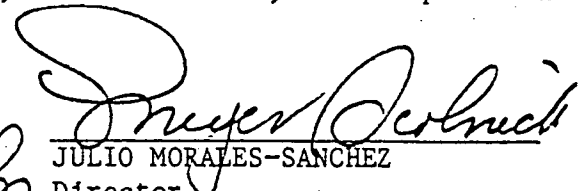
The failure of Respondent to respond substantively to this Notice of Violation as prescribed above, or to request a hearing as provided for herein, will result in an action being commenced by the United States to collect the full amount of the original assessment of civil penalty made by EPA for this violation, and for such other and further relief, including injunctive relief, as may be appropriate. The Respondent is hereby placed on notice that each day on which the violations indicated above have occurred or continue to occur constitutes a new violation, and additional penalties may be assessed therefor at any time during which this Notice remains outstanding. The commitment of Respondent to correct the deficiencies noticed and to comply with 40 C.F.R. Part 112 in the minimum time possible after receipt of this Notice is to its advantage.

AGENCY CONTACT FOR FURTHER INFORMATION AND SETTLEMENT MATTERS

If you wish to discuss the possibility of a settlement of this matter, schedule a conference with EPA, or make further inquiries, contact Henry Gluckstern, Attorney, Water Enforcement Branch, Enforcement Division, EPA Region II, 26 Federal Plaza, New York, New York 10278, or telephone 212-264-4430.

Dated this 4th day of

August 1981


JULIO MORALES-SANCHEZ
Director
Enforcement Division
United States Environmental
Protection Agency
Region II

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ENVIRONMENTAL PROTECTION
AGENCY
NEW YORK, N.Y. 10007